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Correspondence respecting the Interpretation of Article 42 of the English Capitulations of 1675.

No. 1.

Sir H. Layard to the Marquis of Salisbury.—(*Received April* 1.)

(No. 325.)

My Lord, *Constantinople, March* 21, 1880.

MY attention has been called by Dragomans Stavrides and Alischan, in a letter which I have the honour to inclose herewith, to the interpretation to be given to, and to the action which is to be taken with regard to, Article XLII of the Treaty between Great Britain and Turkey, which refers to the right of the British authorities to hear and decide, jointly with the Turkish Courts, criminal cases in which British subjects are concerned.

I referred the matter to Her Majesty's Consul-General and Judge, and I have the honour to inclose likewise copy of the reply which I have received from Mr. Fawcett.

The principal point on which there appears to be some doubt is as to the functions of the British authority in criminal cases in which British subjects are concerned, whether he is to have a voice in the decision, or whether, as asserted by the Turkish Government, he is present at the trials merely in the position of a spectator—to hear, and not to decide.

I should feel obliged if your Lordship would furnish me with instructions as to the interpretation and scope which Her Majesty's Government are disposed to give to the Treaty Article in question.

I have, &c.

(Signed) A. H. LAYARD.

Inclosure 1 in No. 1.

Messrs. Stavrides and Alischan to Sir H. Layard.

Sir, *Pera, March* 11, 1880.

WE beg to draw your Excellency's attention on Article XLII of the Treaty between Great Britain and Turkey, a copy of which we have the honour to submit to your Excellency's consideration.

In virtue of the said Article, British authorities in Turkey have assumed the right of trying cases on an equal footing with the Turkish Judges whenever a British subject was implicated in a criminal matter.

This right was, *ab antiquo*, more or less exercised without opposition on the part of the Turkish Government; but a few years ago the latter began to take a decided exception to the assumption of such a right on the part of the British authorities, on the plea that in the Turkish text of the Treaty the word "decide" does not exist, and that to hear is not to decide.

This argument seems to us to be more plausible than well founded. It is true, we think, that in the Turkish text the word "istima," which is the correspondent word, although it literally means "to hear," has also the judicial meaning of examining and deciding a case, and it is so used in Turkish Courts of Justice.

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Moreover, the Article in question does not attribvte a separate action to the one or to the other of the two functionaries. Their functions are identical; they will hear together with equal power. There is another consideration which corroborates this view of the question. In Article XXIV, referring to our commercial matters, a distinct action is assigned to the British Delegate; he is only to be present to watch the proceedings of the Court, and not to partake in judgment. It is, therefore, evident that the High Contracting Parties intended to establish a distinction between commercial and criminal cases.

Notwithstanding the above considerations, we feel bound also to state to your Excellency that with the French laws and the French criminal procedure that Turkey has adopted, the exercise of the above Treaty right in all its bearings is likely to prove, if not altogether impracticable, at least a very arduous task, requiring a rather numerous staff of experienced Dragomans to co-operate with the Turkish officials in the intricate proceedings prescribed by the new Law.

Our object in bringing the above consideration under your Excellency's notice is to be acquainted with the view which your Excellency may be pleased to entertain in this matter, in order that we may be guided thereby in the examination of the bearing of the new procedure with regard to British subjects at the Commission now sitting.

We have, &c.

(Signed) C. G. STAVRIDES.
J. M. ALISCHAN.

Inclosure 2 in No. 1.

Article 42 of the Capitulations.

THAT in case any Englishman, or other person navigating under their flag, should happen to commit manslaughter, or any other crime, or be thereby involved in a law-suit, the Governors in our sacred dominions shall not proceed to the cause until the Ambassador or Consul shall be present; but they shall hear and decide it together, without their presuming to give them any the least molestation, by hearing it alone, contrary to the Holy Law and these Capitulations.

Inclosure 3 in No. 1.

Mr. Fawcett to Sir H. Layard.

Constantinople, March 19, 1880.

Sir,

I HAVE the honour to acknowledge your Excellency's despatch of the 12th March, inclosing a letter from Messrs. Alischan and Stavrides relative to the right of the British authorities to "hear and decide," jointly with the Turkish Courts, criminal cases in which British subjects are concerned.

I had already cognizance of this letter, which raises a somewhat difficult question. It is impossible for me to give any opinion on the exact translation of the Turkish word in question. Up till, however, a recent date, it seems that no objection was made to the joint jurisdiction, and until the Porte began to introduce new laws, based on French procedure, no sentence, I am assured, was ever executed against a British subject without the approval of the Consul-General. When, however, the change in procedure took place, more than one Turkish Judge heard the case, and the difficulty arose that the Dragoman's voice might be against others. Besides, the Courts were conducted and worked with somewhat more regularity and impartiality than before.

In any flagrant case of injustice the Dragoman protests against the sentence, and the Consulate applies to the Embassy, when, after the usual course, the matter is settled between the Ambassador and the Minister for Foreign Affairs.

From the above your Excellency will observe that, in my opinion, the right of hearing and deciding still exists, but whether it will be convenient or not to insist upon it is another matter. I have great doubts, with the new and complicated mode of procedure, whether it will be possible for the Dragoman (as a question of time) to attend all the proceedings. This is the opinion also of the Dragomans.

I am informed that the American Legation claims the absolute right of trying all their subjects for any crime whatever. An American citizen is now in custody charged with the murder of an Ottoman subject. The American Consulate proposes to try him.

If the Porte accepts this, there is an end of the question, as by the favoured nation clause the British authorities, as well as other countries, would have the right to try their own subjects for any crime whatever.

I beg to return Messrs. Alischan and Stavrides' letter.

I have, &c.

(Signed) J. HENRY FAWCETT.

Inclosure 4 in No. 1.

CRIMINAL JURISDICTION IN THE LEVANT.

Memorandum on the Interpretation to be put on Article 42 of English Capitulations of 1675, in which it is stated that, in Criminal Cases before the Ottoman Courts, the Governors shall not proceed to the Cause until the Ambassador or Consul shall be present; but shall "hear and decide" it together, without presuming to hear it alone.

Sir A. H. Layard, No. 325, March 21, 1880.

[Sir Henry Layard inquires whether the British authority in criminal cases, in which British subjects are concerned, has a voice in the decision, or whether, as asserted by the Turkish Government, he is present at the trials merely in the position of a spectator—to hear and not to decide.]

THE question of British jurisdiction in criminal cases in the Levant has frequently been raised before, and the Secretary of State, with the concurrence of the Law Officers, has, on more than one occasion, issued full instructions upon the subject.

With reference to the particular point now in dispute, Lord Palmerston, in a despatch addressed to Lord Ponsonby, Her Majesty's Ambassador in Constantinople, in 1838, said:—

To Lord Ponsonby, No. 125, June 8, 1838.

"The Capitulations do not confer upon British Agents in criminal cases a right of *advocacy*, but only a right to participate in the *jurisdiction*. The 42nd section of the Capitulations says, 'That in case any Englishman, or other person navigating under their flag, should happen to commit manslaughter, or any other crime, or be thereby involved in a law-suit, the Governors in our sacred dominions shall not proceed to the cause until the Ambassador or Consul shall be present, but they shall hear and decide it together, without their presuming to give them any the least molestation, by hearing it alone, contrary to the Holy Law and these Capitulations.'

"The British Agent then is associated in judgment with the Turkish Judge, and the only advocacy which the British Agent has a right to exert in favour of the accused party is that which every Judge is in every case morally bound to exercise, being watchful that no unfair advantage is taken of the situation of the accused, and that the trial is fair and impartial."

His Lordship then went on to say, with regard to the question of the evidence which the British Agent ought to require:—

"It is unquestionably the duty of every British Agent sitting as a Judge in a Court of Justice, in a cause where life or liberty are at stake, not to consent to the conviction of a British subject until, by closely examining into the credibility of the evidence adduced in support of the charge, he shall have satisfied himself that such evidence has been fairly obtained; that it has not been extorted by undue means; that it is consistent with truth; and that it is sufficient to establish the guilt of the accused."

His Lordship continued:—

"It is therefore the duty of every British Agent, acting as Judge under the 42nd Article of the Capitulations, most vigilantly to take care that no British or Ionian subject is condemned unless his guilt be clearly established, according to the rules and principles of British law."

But his Lordship added:—

"The right of concurrent jurisdiction granted by the Capitulations extends only to the trial, and ceases when the cause is decided; but the right of punishment rests with the Porte alone."

With reference to the attendance of Dragomans on such occasions, Lord Palmerston observed as follows:—

"It appears by your Excellency's despatch that the right of concurrent jurisdiction on the part of the British Embassy in criminal cases 'is effected by the presence of a Dragoman.' Her Majesty's Government are of opinion that this practice should cease, and that the British Consul-General, or Vice-Consul, should for the future exercise that jurisdiction in the name of the British Embassy. For, in the first place, the term

'Dragoman' does not appear in the 42nd Article of the Capitulations. 2ndly. A Consular Agent is more likely to weigh evidence accurately and impartially than a Dragoman would do who cannot be so conversant with British habits and feelings as a person bred up and educated in England. 3rdly. The presence of a British Consular Agent will probably have more weight than that of a Dragoman in the estimation of the Turkish Judges.

"Your Excellency will therefore arrange with the Consul-General that either he or his Vice-Consul should always be present as coadjutor in criminal cases in which British or Ionian subjects are to be tried by a Turkish Court. Your Excellency will direct one of the Dragomans to attend the Consul-General or Vice-Consul on such occasions, but not to take part in the cause, and still less to act as an advocate of the accused, but simply to aid as an interpreter."

Foreign Office, January 31, 1844.

In 1844 the Queen's Advocate was asked:—

"To what extent is the concurrence of the Ambassador, or Consul, to be understood as necessary to a legal conviction and its consequences?"

To which he replied:—

"As it is provided by the 42nd Article of the Capitulations between Great Britain and the Ottoman Empire that Turkish Governors shall not proceed to the cause until the English Ambassador, or Consul, shall be present, and that *they shall hear and decide it together*, I am of opinion that the concurrence of the Ambassador, or Consul, is necessary to a legal conviction;" and Her Majesty's Ambassador at Constantinople was accordingly so informed.

To Sir S. Canning, February 6, 1844.

In January 1847 a claim was put forward by Her Majesty's Consul-General at Constantinople to be allowed to communicate in writing directly with Rifaat Pasha, the President of the Supreme Council of Justice. He considered that as he was necessarily placed in direct communication with the Courts of Justice competent to take cognizance of crimes and offences committed by British or Ionian subjects, and that as, even in the case of the Supreme Council of Justice, he had verbal communication with that Tribunal, so, after the decision of any case, he might forward to the Head of that Tribunal a written communication having reference thereto.

Mr. Wellesley, No. 19, January 20, 1847.

Lord Palmerston, however, considered that the proper relation between the Consul-General and any Turkish Court of Justice was clearly defined in the 42nd Article of the Capitulations (which has been already quoted), and his Lordship observed:—

"Now, according to this Article, the Consul to whom, by Her Majesty's Order in Council, the duty has been exclusively assigned, is bound to be present in person at every trial held under it. In practice, I am informed, the Consul is usually represented by a Dragoman, but although no inconvenience may result from this in ordinary cases, and before the inferior Tribunals, I do not hesitate to say that, in a case of a serious nature, and where the trial is held before the Supreme Council of Justice, it is the duty of the Consul to be present in person, and to insist upon a strict fulfilment of that provision of the Capitulations which requires that the Turkish Judge and the British Consul shall hear *and decide it together*. In a trial thus held the Consul-General is undoubtedly entitled to interpose in any manner for the promotion of the ends of justice; and I conceive that if his Turkish colleague takes, in his opinion, a wrong view of the case, and comes to a wrong conclusion, the Consul-General may tender to him on the spot a written protest, not indeed with the view of eliciting an answer, or of commencing a controversy, but as the first step towards a representation to the Porte through the Embassy.

"The case, under such circumstances, would assume the character of one in which justice was denied or perverted by the Turkish Judge, and it rests with the Embassy alone to debate and settle such questions with the Ministers of the Porte.

"I consider this to be the true position in which the Consul-General is placed towards the Turkish Courts of Justice, and I do not imagine that the Porte would question the right of the Consul-General to tender a protest in open Court, when it was clearly understood that any measures to be taken under such protest were to be discussed and settled between the Embassy and the Porte."

To Consul-General Cumberbatch, No. 3, January 20, 1847.

A similar communication was accordingly made to Her Majesty's Consul-General.

Mr. Wellesley, No. 50, February 19, 1847.

In February 1847 another question arose with regard to Consular jurisdiction at Constantinople, and as Her Majesty's Consul-General was at issue with the Supreme Council of Justice upon the point, Lord Palmerston laid down the following rules for the guidance of Her Majesty's Embassy:—

"First, as regards the statement that Mr. Cumberbatch's intercourse with the Supreme Council exists only on toleration, that the Porte conceives him to be acting in his judicial capacity on the part of the Embassy, I am at a loss to understand how the Porte could entertain this opinion, or how it was allowed to continue under such a misapprehension. The 42nd Article of the Capitulations distinctly mentions the Consul as well as the Ambassador, and the Porte has no power to pretend to prescribe to the British Government to which of those officers the authority to exercise the jurisdiction granted to the British Crown under the Capitulations shall be delegated. You will immediately address an official notice to the Porte announcing to it that the British Government has exclusively intrusted to Her Majesty's Consular officers jurisdiction in criminal matters, where British subjects are concerned; and you will request that all the Turkish Tribunals, from the highest to the lowest, shall be made acquainted with this fact.

"In the next place, I have to state to you that your despatch and Mr. Cumberbatch's letter confirm me in the opinion which induced me to state, in my despatch of the 20th ultimo, 'that in a case of a serious nature, and where the trial is held before the Supreme Council of Justice, it is the duty of the Consul to be present in person;' and I shall repeat on the present occasion my instruction to Mr. Cumberbatch on that point.

"You judge correctly of the relative functions of the Consulate and of the Embassy in matters growing out of a trial held conjointly by the Turkish Tribunal and the British Consul-General. If the conduct of the Turkish Judge is unjust, it is from the Embassy alone that a representation against it is to be addressed to the Porte on the complaint of the Consul-General to the Embassy; but neither the Embassy nor the Consul is entitled authoritatively to question the degree or nature of the punishment awarded to the criminal by the Turkish Judge, provided that such punishment is consistent with the Turkish law, and provided the criminal has been fairly and justly convicted. For instance, in the case referred to in your despatch, if the Turkish law awards the punishment of banishment, no British authority can authoritatively interfere to stay its execution. I do not mean to say that the Embassy may not appeal in case of need to the clemency of the Porte for the mitigation or remission of a sentence passed upon a British subject, even though lawfully convicted; but the appeal can only be urged as a matter of favour, and not as a matter of right.

"You will find in my despatch to Viscount Ponsonby of the 8th June, 1838, to which I have especially to call your attention on the present occasion, the following passage:—'I know of no ground on which Her Majesty's Government can pretend to question the right of the Porte to punish a convicted felon. The right of concurrent jurisdiction granted by the Capitulations extends only to the trial, and ceases when the cause is decided; and the right of punishment rests with the Porte alone.'

"It is possible that Mr. Cumberbatch may have been led to take the erroneous view which he entertains as to his right to object to the banishment by the Porte of convicted persons by a misinterpretation of the Order in Council which says 'that it shall be lawful for them, or any of them,' viz., the Consuls, 'to deal with any British subject who may have been *twice* convicted in any such Court of joint jurisdiction, or who may have been once convicted in a Consular Court, and once in a Court of joint jurisdiction, as aforesaid, in the same manner as if such British subject had been twice convicted in a Consular Court;" viz., to send such a person out of the dominions of the Porte. But this clause of the Order in Council was not intended to interfere with the supreme right of the Turkish Tribunals to sentence, without reference to the Consul, persons convicted in them, but was merely meant to enable the Consul, if requisite, to remove from the Turkish dominions, over and above the sentence of the Porte, any person so convicted.

"You will find it stated in the same despatch above cited, 'that it is unquestionably the duty of every British Agent sitting as a Judge in a Court of Justice, in a cause where life or liberty are at stake, not to consent to the conviction of a British subject until, by closely examining into the credibility of the evidence adduced in support of the charge, he shall have satisfied himself that such evidence has been fairly obtained; that it has not been extorted by undue means; that it is consistent with truth; and that it is sufficient to establish the guilt of the acused;' and further, 'it is the duty of every British Agent, acting as Judge under the 42nd Article of the Capitulations, most vigilantly to take care that no British or Ionian subject is condemned unless his guilt is clearly established, according to the rules and principles of British law.'

"In conformity with the principle here laid down, as the British Consul-General, sitting in concurrent jurisdiction with the Turkish Judge, may, as I stated in my despatch of the 20th ultimo, tender to the Turkish Judge on the spot a written protest, if the latter takes, in his opinion, a wrong view of the case, and comes to a wrong conclusion; so he

may protest in like manner against the admission of undue evidence to the prejudice of the accused. But I repeat that the subsequent proceedings on any such protest must be taken by the Embassy, and be discussed by it alone with the Ministers of the Porte."

To Consul-General Cumberbatch, No. 7, February 19, 1847.

An instruction in the same sense was addressed to Her Majesty's Consul-General, which concluded with this injunction:—

"I cannot conclude without pointing out to you, in the strongest terms, the indispensable necessity of your maintaining your intercourse with the Turkish functionaries on the most amiable footing.

"You will abstain, as much as possible, from angry discussion or dispute, and will, on the contrary, endeavour, by conciliatory language and demeanour, to gain an influence with the Turkish Judges, and lead them to accept of your co-operation for the investigation of crimes and charges brought before the Mixed Court, in a candid and liberal spirit."

To Mr. Cumberbatch, No. 8, March 4, 1847.

In another despatch the Consul-General was told "that whenever in a case of mixed jurisdiction he had occasion to apply to the Embassy on account of justice being, in his opinion, perverted or withheld, in order that the Embassy might make a representation to the Porte, he was to accompany his application to the Embassy with copies of the whole of the depositions and proceedings in the case, and with the decision of the Turkish Judge, and the remarks, if any, by which that functionary explained it."

In September following a case occurred in which Her Majesty's Consul-General claimed to be present at the trial of an Ionian subject accused of the murder of a Mussulman, and asserted his right, under the Capitulations, to hear and decide the case in conjunction with the Sheikh-ul-Islam, the Chief of the Mahommedan religion, in whose Court the trial was to take place. The Porte, however, refused to comply; and preferred to order the release of the prisoner, rather than continue the discussion of the right of the Consul-General to be present at the trial.

The case was referred to the Queen's Advocate, who gave the following Report:—

Queen's Advocate, September 20, 1847.

"The claim of Her Majesty's Consul-General to hear and decide the cause in question, in conjunction with the Turkish Judge in whose Court the trial was to have taken place, appears to be borne out by the 42nd Article of the Capitulations, as set forth in the English version of them hitherto in use, and also to be in exact conformity with the view repeatedly taken thereof by your Lordship.

"Even according to the version now given, and which is said to be a literal translation from the Turkish, not only the presence, but the concurrence of the Ambassador or Consul is required. I therefore cannot accede to the correctness of the interpretation which, from Lord Cowley's despatch, the Porte appears to attach to it, namely, that the British Consul has no right to be present at the trial.

"Unless some satisfactory arrangement such as that suggested by Lord Cowley can be made with the Porte for the settlement of this matter, I think that Her Majesty's Government cannot do otherwise than insist upon a compliance with the tenour of the Capitulations, to this extent at least, that the British Consul may be present at the trial to see that the same is properly conducted, and that no sentence in which he does not concur shall be carried into execution."

To Lord Cowley, October 14, 1847.

And an instruction to this effect was accordingly addressed to Her Majesty's Ambassador.

Lord Cowley to Mr. Murray, November 17, 1847; in Lord Cowley's No. 435 of 1847.

In November of the same year, Her Majesty's Agent and Consul-General in Egypt having applied to Her Majesty's Ambassador at Constantinople for information respecting the manner in which the Order in Council of the 19th June, 1844, was carried out, Lord Cowley furnished him with the following information as to matters in which it was carried out at Constantinople:—

"It appears to me that the difficulties which you experience arise from not having made any distinction between offences committed by British or Ionian subjects against Turks, and offences committed by British or Ionian subjects against their own countrymen, or against the subjects of other Christian European Powers. The former are judged before a Turkish Tribunal in the presence of and with the concurrence of Her Majesty's Consul-General; the latter are tried by him, either alone or assisted by British or Ionian Assessors as the case may be. It is to the latter class of criminals—that is, to such as have committed offences of a more heinous nature against persons not Ottoman subjects—that the provisions of the Order in Council in regard to their being sent to Malta for trial apply.

"But British subjects who are accused of offences against Ottoman subjects may be arrested and taken to prison by the Turkish authorities. Notice of their arrest is given to the Consul-General, and a day is appointed for their trial before the Police Court or other competent Turkish Tribunal. If the case is of sufficient gravity, the Consul-General attends the trial in person. He ought, strictly speaking, to be present at all trials, but

practically he only attends those of greater importance, and his clerk and a Dragoman appear for him when the accusation is of a trifling nature. On these occasions, either personally or by deputy, he acts as a Judge, conjointly with the Ottoman Judge or Judges, examines witnesses, makes what observations he pleases, and his consent is absolutely necessary to the condemnation of the accused. If he is satisfied of the accused's guilt, he signifies his assent; if he is not, he either insists on the production of further evidence, or demands the prisoner's acquittal.

"Supposing him to coincide with the Ottoman Judge as to the guilt of the accused, he delivers the latter over to the Turkish authorities, to be punished according to Turkish law. He has nothing whatever to do with the sentence, the power of punishing in cases of mixed jurisdiction being vested in the Ottoman authorities alone.

"With regard to the rules of evidence, it is laid down by Viscount Palmerston that the trial should be carried on according to British rules of evidence.*

"Cases seldom occur in this part of the Empire in which the Consul-General and the Turkish Judges do not agree in opinion as to the guilt or innocence of the accused person. But where a difference of opinion has occurred, the Consul-General's decision being in favour of the prisoner, while the Turkish Judge still insisted upon his guilt, the matter has been referred to Her Majesty's Embassy."

In February 1860 the Law Officers were again asked whether, under Article 42 of the Capitulations, by which a joint jurisdiction was conceded to Her Majesty's officers in criminal cases, the effect of that concession went beyond an admission that the British officer should be consenting to the conviction of the criminal; whether, in short, the British officer was empowered to take part in *determining* in what way or degree the law of Turkey applied to the charge, or in *pronouncing sentence* according to the law, and whether the sentence which might be pronounced, either by the Turkish Judge alone, or by the Turkish Judge and British officer concurrently, would in either case be executable in Her Majesty's dominions.

Law Officers, February 18, 1860.

The case was a Moldavian one, and the Law Officers reported that, according to Article 42 of the Capitulations, no British subjects, Ionians, or others under British protection, could be legally condemned unless they were tried by the British Ambassador or Consul, *in conjunction* with the Moldavian Judge.

They then went on to explain the meaning of "joint jurisdiction" or "conjunction." They said: "We think that the terms of the above Article (Article 42, in which it is said they shall 'hear and decide' the case together) do not extend beyond an admission that the British Ambassador or Consul shall be a consenting party to the conviction of the criminal, and we are of opinion that the British Ambassador or Consul is empowered to take part in determining—

"(1.) The sufficiency of the evidence, not by the law of Turkey, but by the ordinary principles of justice.

"(2.) Whether the alleged offence comes within the true intent and meaning of the law of Turkey; and

"(3.) What ought to be the punishment pronounced on the offender, which must be measured, not by Turkish rule or standard, but according to reason and equity as understood by the most civilized nations."

Consul Cumberbatch, December 4, 1871.

This would appear to be in accordance with the view taken of his duties by the Consul at Smyrna, who, so recently as December 1871, wrote a despatch upon the subject, in which he said:—

"The jurisdiction exercised by the Consuls of *all nations* in the Ottoman Empire, in virtue of the Capitulations, amounts to sole jurisdiction in *civil* and *criminal* cases when plaintiff and defendant are Europeans. The Consuls exercise a joint jurisdiction with the Turkish Tribunals in *criminal* cases where either plaintiff or defendant is an Ottoman subject, the case being heard at the Ottoman Court in the presence of the Consul or his Dragoman, who may consent to, or protest against, the sentence."

In 1871 a case occurred which it may perhaps be as well to revert to in this Memorandum. A British subject (Mr. Joseph Williams) was irregularly tried by a Turkish Tribunal for the manslaughter of a watchman at Constantinople, and sentenced to be imprisoned for fifteen years.

The correspondence which passed upon the subject was referred to the Queen's Advocate for his opinion, and he reported as follows:—

"The trial of Mr. Joseph Williams has not been conducted in accordance with the Capitulations between Her Majesty and the Porte, and the sentence pronounced upon him involves, in my opinion, a breach of the Capitulations. Further, it is open to Her

* This refers to Lord Palmerston's despatch to Mr. Cumberbatch No. 7, February 19, 1847.

Majesty's Government to contend that the preliminary inquiry conducted in the Court of the 'Zaptieh' upon which the sentence of the Supreme Council was founded, has not been conducted in accordance with the Firman of the Sultan of February 1854, and is therefore invalid according to Turkish law.

"The trial and condemnation of Mr. Williams would thus appear not merely to involve an international wrong, but an irregularity as regards the law regulating the procedure of the 'Zaptieh,' which vitiates the proceedings, and will entitle Her Majesty's Government to protest against them as altogether invalid. Under these circumstances, Her Majesty's Government would be entitled, in my opinion, to demand of strict right that a new trial of Mr. Williams should be had according to the Capitulations between Her Majesty and the Porte, the binding effect of which is recognized in the Firman of the Sultan; and it will be for your Lordship to consider whether it would not be proper as a warning to the Turkish authorities against repeating such glaring violations of their Treaty obligations, to demand, as suggested by Sir P. Francis, that Mr. Williams should be handed over to the British authorities, there being a precedent for such course, and it being contrary to British principles of criminal jurisprudence, when the proceedings of a Court of Justice in a criminal trial have been found to be invalid, for the accused party to be placed a second time in peril of his life for the same offence."

The question was, however, ultimately settled by Mr. Williams being set at liberty.

Queen's Advocate, May 16, 1871.

It will be seen from the above that the presence of the British Ambassador, or Consul, is absolutely necessary to render valid a criminal trial before an Ottoman Court in which a British subject is concerned, and that the British authority occupies a very important position at such a trial, far beyond that of an ordinary "spectator—to hear and not to decide."

(Signed) E. HERTSLET.

Foreign Office, April 10, 1880.

Inclosure 5 in No. 1.

Minute by Sir J. Pauncefote on Sir H. Layard's No. 325 *of March* 21, *and Sir E. Hertslet's Memorandum of April* 10, 1880.

ALTHOUGH the word used in the Turkish text in its literal sense means "to hear," the Dragomans Stavrides and Alischan declare that in its juridical sense it means "hear and determine," and probably for that reason it was so translated.

Much may be said, therefore, in favour of the construction of the Article adopted by Lord Palmerston in 1838. But there are technical difficulties in the way of insisting upon the exercise of joint *jurisdiction* by Her Majesty's Consuls with the native Judges in these mixed cases.

Lord Palmerston's despatch of the 8th June, 1838, was written before "The Foreign Jurisdiction Act, 1843," and previously to the discussions which led to the passing of that measure.

It probably did not occur to his Lordship that, in order that a British Consul might lawfully exercise such joint criminal jurisdiction over a British subject, he must be empowered to do so by an Act of the British Legislature; for he represents British authority, and it has never been suggested that in the exercise of such joint jurisdiction the British Consul should derive his judicial powers from the Sultan.

After the passing of the Foreign Jurisdiction Act, and of the first two Orders in Council for the Levant, Lord Palmerston appears to have thought that the difficulty was removed, for, in 1847, we find him still adhering to his view that the British Consuls should *decide* these cases jointly with the native Judges, this duty, he states, having been assigned to them *by the Order in Council*. But this is an error.

The Orders in Council for the Levant have never empowered British Consuls to try British subjects except in the Consular Courts, and according to the law and procedure therein prescribed.

I can find no Report of the Law Officers in which it has ever been laid down that Article 42 gave the British Consuls any power to act *judicially* in these cases; but the result of their Reports appears to be that the Consuls are entitled to "hear and decide" the case together with the native Judges, to this extent, that they may assent or object to the decision of the Court. If they assent, the Turkish law takes its course. If they object, the proceedings are suspended pending a reference to the British Embassy, and the case from that moment enters into the field of diplomacy; but whatever be the result, the decision, whether upheld or modified, is carried out as a decision of a Turkish Tribunal.

Accordingly, the Law Officers, in a recent Report, advised that in these mixed cases the Turkish Tribunals had "sole jurisdiction" within the meaning of sections 10 and 108 of the Cyprus High Court of Justice Ordinance.

Looking at the question practically, the construction of Article 42 laid down in the Report of the Law Officers of the 18th February, 1860 (cited at p. 10 of Sir E. Hertslet's Memorandum), gives us all that we can reasonably require, and enables us to escape from the anomaly of a British official being called upon to try a British subject in a Turkish Court according to Turkish law, and from the difficulty of investing him with the necessary legal powers to perform such judicial functions.

In my opinion, therefore, Sir H. Layard's inquiry should be answered in the sense of the Law Officers' Report of the 18th February, 1860, above referred to.

J. P.

April 26, 1880.

No. 2.

Earl Granville to Sir H. Layard.

(No. 319.)

Sir, *Foreign Office, May* 13, 1880.

I HAVE to acknowledge the receipt of your Excellency's despatch No. 325 of the 21st March last, in which you request to be furnished with instructions as to the interpretation and scope which Her Majesty's Government are disposed to give to Article 42 of the English Capitulations of 1675, where it is stated that, in criminal cases before the Ottoman Courts, the Governors shall not proceed with the cause until the Ambassador or Consul shall be present, but that they shall "hear and decide" it together, without presuming to hear it alone.

A Confidential Memorandum on this subject has been drawn up by the Librarian to the Foreign Office, of which a copy is inclosed herewith for your Excellency's information.*

Although the word used in the Turkish text of Article 42 means in its literal sense "to hear," I observe that the Dragomans Stavrides and Alischan in their report declare that in its judicial sense it means "hear and determine;" and probably for that reason it was so translated.

Much may be said, therefore, in favour of the construction of the Article adopted by Lord Palmerston in his despatch to Lord Ponsonby No. 125 of the 8th June, 1838 (see pp. 1, 2, and 3 of Sir E. Hertslet's Memorandum). But there are technical difficulties in the way of insisting upon the exercise of joint jurisdiction by Her Majesty's Consuls with the native Judges in these mixed cases.

Lord Palmerston's despatch of the 8th June, 1838, was written before the Foreign Jurisdiction Act of 1843 was passed, and previously to the discussions which led to the passing of that measure, in the course of which it was pointed out that, in order that a British Consul might lawfully exercise jurisdiction over a British subject in the Levant, he must be empowered to do so by an Act of the British Legislature. Accordingly the Foreign Jurisdiction Act was passed, under which the various Orders in Council have been issued to regulate the exercise of British Consular jurisdiction in the Ottoman dominions.

After the passing of the first two Orders in Council for the Levant, Lord Palmerston appears to have thought that the difficulty was removed, for in 1847 we find him still adhering to his view that the British Consuls should decide these cases jointly with the native Judges, this duty, he states, having been assigned to them by the Order in Council. But, as a matter of fact, the Orders in Council for the Levant have never empowered Her Majesty's Consuls to try British subjects except in the Consular Courts, and according to the law and procedure therein prescribed.

There is no Report of the Law Officers in existence in which it has ever been laid down that Article 42 of the English Capitulations of 1675 gave the British Consul any power to act judicially in these cases, but the result of their Reports appears to be that the Consuls are entitled to "hear and decide" the case together with the native Judges, in this sense only, that they may take part in the proceedings, and may assent or object to the decision of the Court. If they assent, the Turkish law takes its course. If they object, the proceedings are suspended pending a reference to the British Embassy, and the case from that moment enters into the field of diplomacy; but whatever be the result, the decision, whether upheld or modified, is carried out as a decision of a Turkish Tribunal.

* Inclosure 4 in No. 1.

Looking at the question practically, the construction of Article 42 laid down in the Report of the Law Officers of the 18th February, 1860 (cited at p. 10 of Sir E. Hertslet's Memorandum), satisfies all the reasonable requirements of the case.

In reply, therefore, to your Excellency's inquiry as to the interpretation and scope which Her Majesty's Government are disposed to give to the Treaty Article in question, I have only to refer you to that Report of the Law Officers in which they state that in their opinion the terms of Article 42 do not extend beyond an admission that the British Ambassador or Consul shall be a consenting party to the conviction of the criminal, and that the British Ambassador or Consul is empowered to take part in determining—

1. The sufficiency of the evidence, not by the law of Turkey, but by the ordinary principles of justice;

2. Whether the alleged offence comes within the true intent and meaning of the law of Turkey; and

3. What ought to be the punishment pronounced on the defender, which must be measured, not by Turkish rule or standard, but according to reason and equity as understood by the most civilized nations.

I am, &c.
(Signed) GRANVILLE.

No. 3.

The Earl of Dufferin to Earl Granville.—(Received April 3.)

(No. 37. Consular.)

Constantinople, March 25, 1882.

My Lord,

I FIND from Sir Charles Wilson that there is some doubt with regard to the duties of Consular Dragomans while attending cases between British and Ottoman subjects before the Ottoman Tribunals.

I have, in consequence, requested Mr. Stavrides to draw up a Memorandum for defining exactly the duties of Dragomans, a copy of which I have the honour to inclose herewith.

Providing this Memorandum meets with your Lordship's approval, I propose to issue it in the form of a Circular to the British Consular officers in the Ottoman Empire for their guidance.

It has been drawn up in French, that being the language generally in use among the Dragomans, but I inclose an English translation.

I have, &c.
(Signed) DUFFERIN.

Inclosure in No. 3.

Memorandum by Mr. Stavrides respecting Duties of Dragomans.

LA base de l'action des Drogmans dans les affaires judiciaires repose sur les Articles 24 et 42 des Capitulations, qui sont conçus ainsi qu'il suit :—

"Art. 24. Si un Anglais ou autre sujet de l'Angleterre se trouve impliqué dans quelque procès judiciaire, le Juge ne pourra ouïr ni décider la cause, avant que l'Ambassadeur, le Consul, ou l'Interprète ne soit présent, et tout procès qui excédera la valeur de 4,000 aspres, devra être ouï à la Sublime Porte et nulle part ailleurs."

"Art. 42. Si quelque Anglais ou autre personne naviguant sous la bannière Anglaise venait à commettre quelque meurtre ou homicide involontaire ("manslaughter") ou autre crime quelconque, et que par là il fût impliqué dans une poursuite civile ou criminelle, les Gouverneurs dans nos sacrés États ne procéderont point dans la cause avant que l'Ambassadeur ou les Consuls ne soient présents; mais ils ouïront et jugeront la dite cause de concert avec eux sans se permettre de les molester d'aucune manière, en écoutant la dite cause sans leur concours, en contravention à la sainte loi et aux présentes Capitulations."

Maintenant, d'après la teneur de ces deux Articles le Drogman n'aura qu'à assister seulement aux affaires civiles et commerciales concernant les sujets Anglais, tandis qu'en matière criminelle il se constitue Juge au même pied que le Juge Ottoman. Telle est la théorie du droit qui est stipulé dans les susdits Articles. Cependant, en pratique le droit en question subit quelques modifications. Dans les affaires commerciales et civiles le Drogman ne se borne pas seulement à être présent à l'audience mais il assiste aussi aux

délibérations. Il fait des observations toutes les fois que la procédure n'est pas respectée, il appelle l'attention du Tribunal sur les arguments et les preuves mis en avant par le sujet Anglais, et s'il jouit d'un certain prestige auprès du Tribunal par sa capacité et sa longue expérience, il peut même influencer la décision du Tribunal en faveur de la justice. Enfin, il signe le "Carar" (décision) rendu, et il est présent ensuite au prononcé du Jugement.

Il est évident qu'une extension pareille de son action dans les affaires civiles et commerciales n'est pas prévue par l'Article 24, mais il dépend de l'habileté du Drogman de l'exercer sans provoquer les protestations des autorités judiciaires.

Tout au contraire, dans les affaires criminelles au lieu d'une extension il y a en pratique une certaine restriction de droit stipulé dans l'Article 42.

Le Drogman, quoique étant Juge au même niveau, ne saurait plus exercer le même droit qu'il exerçait jadis lorsqu'un seul Juge siégeait au Tribunal. Maintenant le Tribunal est composé de trois et de cinq Juges et les affaires se décident à la majorité des voix. Il serait donc exhorbitant et incompatible avec la nouvelle législation de maintenir toujours que la voix du Drogman est équivalente sinon prépondérante à celle de la majorité ou bien de l'unanimité du Tribunal.

Par conséquent, la voie à suivre par le Drogman dans une affaire criminelle est la suivante:

Il doit d'abord être présent à tous les interrogatoires, poser des questions lui-même quand il le croit à propos; prendre note exacte de l'instruction de l'affaire et la soumettre à son chef pour le mettre à même d'en juger et de lui donner ses instructions par rapport à la culpabilité de l'accusé. Muni alors de ses instructions il doit se rendre au sein de la Chambre d'Accusation et discuter l'affaire avec cette Chambre et lorsqu'enfin le procès est soumis à la Cour Criminelle, assister à l'audience, veiller à ce que l'accusé ait pleine liberté de présenter sa défense, assister ensuite aux délibérations de la Cour, discuter et argumenter avec elle sur le mérite de l'accusation, et si une injustice est commise d'une manière patente, refuser sa signature à la décision de la Cour et protester. Cependant, comme nous avons dit ci-dessus, il faut user de ce droit avec un certain ménagement et seulement dans le cas où une flagrante illégalité est commise.

Il est bien entendu qu'il n'en est pas de même lorsque l'accusé est un sujet Ottoman au préjudice d'un Anglais. Ce cas n'est pas prévu par les Traités, mais dans la pratique l'action du Drogman est à peu près celle qui est exercée dans les affaires civiles et commerciales. Il assiste également aux interrogatoires qu'il signe, il va à la Chambre d'Accusation et à la Chambre Criminelle, il assiste aux délibérations et il signe le "Carar" sans cependant revendiquer le droit de s'y opposer lorsqu'il croit que la décision de la Cour n'est pas juste. En somme le degré de l'influence qu'il peut exercer en pareil cas dépend de sa capacité et du prestige dont il jouit.

Je serais donc d'avis, ainsi qu'il est requis par Sir Charles Wilson, qu'une copie de ce Rapport soit envoyée à tous les Consulats de Sa Majesté dans l'Empire Ottoman pour qu'ils servent de guide aux Drogmans dans l'exercice de leurs fonctions.

(Signé) C. G. STAVRIDES.

Constantinople, le 21 Mars, 1882.

(Translation.)

THE basis of the action of Dragomans in judicial affairs rests on Articles 24 and 42 of the Capitulations, which are as follows:—

"Article 24. That if an Englishman, or other subject of that nation, shall be involved in any law-suit, or other affair connected with law, the Judge shall not hear or decide thereon until the Ambassador, Consul, or interpreter shall be present; and all suits exceeding the value of 4,000 aspers shall be heard at the Sublime Porte and nowhere else."

"Article 42. That in case any Englishman, or other person navigating under their flag, should happen to commit manslaughter or any other crime, or be thereby involved in a law-suit, the Governors in our sacred dominions shall not proceed to the cause until the Ambassador or Consul shall be present, but they shall hear and decide it together, without their presuming to give them any the least molestation, by hearing it alone, contrary to the Holy Law and these Capitulations."

According to the wording of these two Articles, the Dragoman is only to be present at the hearing of civil or commercial cases in which British subjects may be concerned, whilst, on the other hand, in criminal matters he is to act as a Judge on the same footing as an Ottoman Judge.

Such in theory is the right that is secured by the above-mentioned Articles. In practice, however, it is somewhat modified. In civil and commercial matters the Dragoman

is not only present at the hearing of cases, but assists also at the deliberations. He remarks each time that the procedure is not respected, and calls the attention of the Tribunal to the arguments and proofs brought forward by the British subject. Should he, owing to his capacity and great experience, enjoy a certain prestige with the Tribunal, he may even be able to influence its decision in favour of justice. Lastly, he signs the "Carar" (decision), and is present when sentence is given.

It is clear that Article 24 does not provide for such extended action on the part of the Dragoman in civil and commercial matters, but the power of exercising it without calling forth protestations on the part of the judicial authorities must depend on his intelligence.

In criminal matters, on the other hand, instead of an extension there is, in practice, a certain restriction of the right secured by Article 42.

The Dragoman, although he ranks with the Judge, can no longer exercise the same right as when there was only one Judge on the Bench. The Tribunal now consists of three and five Judges, and its decisions are arrived at by a majority. It would consequently be an exaggerated pretension, and incompatible with the new legislation, were it still asserted that the vote of the Dragoman is equivalent, if not superior, to that of the majority of the whole Tribunal.

The following is consequently the course to be followed by a Dragoman in criminal cases:—

He should be present at the preliminary examination, and ask questions himself when he thinks it advisable to do so. He should note carefully the proceedings so as to be able to submit them to his chief in order that the latter may form an opinion, and give him instructions with regard to the guilt of the person accused. Having obtained his instructions he should proceed to the "Chambre d'Accusation," and discuss the matter there. When the case comes before the Criminal Court, he should be present at the trial, and see that the person accused has full liberty to make his defence. Later on he should assist at the deliberations of the Court, discuss and argue with it as to the merits of the case. Should an evident act of injustice be committed, he should refuse to sign the decision of the Court, and protest. As has already been stated, however, this right must be exercised with a certain amount of care, and only when a flagrant case of illegality occurs.

The same course of action is not followed should the person accused be an Ottoman subject as against a British subject. This eventuality has not been provided for by the Capitulations. But practically the action of the Dragoman is almost the same as in civil and commercial matters. He is present at the preliminary examination and signs it, enters the "Chambre d'Accusation" and the "Chambre Criminelle," is present at the deliberations and signs the "Carar" without claiming the right, however, of opposing himself to the decision of the Court should he consider it an unjust one. The influence that he may be able to exercise in this kind of case must depend on his capacity and prestige.

I think it advisable that a copy of this Memorandum should, as Sir C. Wilson requests, be sent to all British Consulates in the Ottoman dominions for the direction of Dragomans in the exercise of their duties.

(Signed) C. G. STAVRIDES.

Constantinople, March 21, 1882.

No. 4.

Earl Granville to the Earl of Dufferin.

(No. 68. Consular.)

My Lord, *Foreign Office, July* 11, 1882.

I HAVE had under my careful consideration your despatch No. 37 of the 25th March last, stating that some doubts have arisen with regard to the duties of Consular Dragomans while attending cases between British and Ottoman subjects before Turkish Tribunals, and inclosing, for my approval, a Memorandum prepared by Mr. Stavrides which your Excellency suggests might be issued in the form of a Circular to the British Consular officers in the Turkish dominions for their guidance; and, in reply, I have to inform you that the question referred to is of so delicate a nature, and one out of which —according to the circumstances of each particular case—so many difficulties are liable constantly to arise, that the issue of a general Circular on the subject seems to me not expedient at the present time. The difficulties to which allusion has been made above have been felt not by Her Majesty's Government only, but also by the various foreign Powers who enjoy privileges under the Capitulations within the dominions of the Porte,

and the issue, therefore, of distinct rules for guiding the conduct of British Consular Dragomans without first coming to a general understanding on the subject with the other Representatives of the Treaty Powers at Constantinople would rather tend to complicate matters than to terminate controversy.

Conflicting opinions have been from time to time expressed by eminent authorities on the interpretation and scope of the 42nd Article of the English Capitulations of 1675. which has reference to the presence of the Ambassador or Consul in criminal cases before Ottoman Courts.

Full instructions on this point were sent to Sir H. Layard in a despatch from this Department No. 319, dated the 13th May, 1880, and no fresh reasons appear to have arisen since that time for departing from the principles then laid down, which left it to the Consul to apply to Her Majesty's Embassy for advice whenever any case of doubt or difficulty might arise.

The extract from the Memorandum by Mr. Stavrides, of which a copy is herewith inclosed,* appears to me unobjectionable, and one the substance of which might perhaps conveniently be adopted in the instructions which you may have occasion to furnish to any Consular officer applying to you for advice.

I am, &c.

(Signed) GRANVILLE.

No. 5.

Sir W. White to the Marquis of Salisbury.—(Received January 24.)

(No. 8. Consular.)

My Lord, *Constantinople, January* 12, 1889.

I HAVE the honour to inclose copy of a *note verbale* which I have received from the Sublime Porte showing that the Ministry of Justice complains of the attitude observed by Mr. Vice-Consul Jones (who was at that time an Assistant attached to Her Majesty's Consulate-General) in the trial of a British subject which Mr. Jones attended as Dragoman under Article 42 of the Capitulations.

Mr. Jones, I am informed, has the approval of Consul-General Sir H. Fawcett for his action, but before replying to the Porte I am anxious to refer the question to your Lordship, as I know that the Porte's interpretation of Article 42 of the Capitulations as to the legitimate action of the Dragoman in criminal cases is at variance with that hitherto adopted by Her Majesty's Government.

On the 6th June last I had the honour of addressing to your Lordship a despatch No. 41, Consular, on this same subject, in which I ventured to ask to be furnished with instructions for my guidance, as well as for that of Consular officers in the Ottoman Empire; and in addition to the information I then transmitted to your Lordship, I have thought it proper to obtain from Mr. Dragoman Stavrides and Mr. Vice-Consul Block exhaustive Reports on the whole question, copies of which I herewith inclose.

It will be possible, with these Reports before them, for the Law Officers of the Crown to make a very thorough study of the question, which is one which will repay investigation, and its settlement would be of great utility, seeing the growing tendency of the Turkish Law Courts, since the introduction of the new judicial procedure in 1879, to diminish the influence of the Dragoman in cases where foreign subjects are concerned.

For this reason, and because it is being frequently brought to my notice that Her Majesty's Consuls, and their Dragomans, are in doubt as to the views of Her Majesty's Government concerning the action of the Dragoman under Article 42, I venture thus to address your Lordship at such length.

I desire, however, to make an observation with regard to a suggestion of Mr. Stavrides in his Memorandum, "that it becomes important that some modification of Article 42 of the Capitulations is necessary."

It is, in my opinion, most disadvantageous to alter a letter of the Article in question, and I would not for a moment advocate such a course. Indeed, in 1874, Lord Derby having requested Sir Henry Elliot to furnish a Report on certain proposals of the Ottoman Government to restrict the attributes of the Dragoman, Sir Henry Elliot reported in his despatch of the 18th October, 1874, that in criminal cases before the national "Tribunals, the sentence in order to be valid must, under the Treaties, be concurred in by the Consul; and although this is a right which should be exercised with discretion, it would not safely be formally abandoned," an opinion which Sir P. Francis, then Her Majesty's Consul-General, shared; and Sir H. Elliot adds that he "verbally informed the Porte that Her Majesty's

* Inclosure in No. 31, extract: "Par conséquent" to "commise."

Government thought that no improvement had been made in the judicial organization as would then make it possible to abandon any of the precautions by which Her Majesty's Government attempts to secure a proper administration of justice;" and at that time a correspondence took place with the Porte, and the Ottoman Government, on receipt of an identic note from the foreign Missions on the 5th March, 1875, abandoned its pretensions that Dragomans were to be excluded from the deliberations in criminal and civil cases, and issued a Circular, dated the 17th April, 1875, on the subject, printed in Aristarchi's "Législation Ottomane," vol. v, p. 98.

The Porte may now say that since 1879 their judicial organization is on a better footing; this may, to a certain extent, be so, but I could not for a moment advise any alteration in Article 42 on that account, and I therefore merely venture to state that, in my opinon, it is expedient that instructions should be drawn up showing how far the Dragoman may rightly intervene, and how far Her Majesty's Embassy may support the Dragoman in the many cases that become causes of dispute between Her Majesty's Embassy and the Porte.

I beg also on this subject to call attention to the Circular of the Porte, undated, published in Aristarchi's "Législation Ottomane," vol. iv, p. 19 (p. 20, third paragraph).

In my despatch No. 6, Consular, of the 9th instant I had the honour to inform your Lordship that I would report more fully on the principle involved in the recent case of a British subject arrested at Mecca; and Mr. Stavrides in his Memorandum has reported on the case, connected as it is with Article 42; Mr. Block has also, at my request, given a résumé of the precedents of 1883 and 1884, which I have the honour to inclose. I transmit also copy of a Memorandum I have received from the Dutch Minister, who is equally interested with us in this subject, and I venture to request your Lordship's instructions as to our legal rights in the matter, which I think it desirable should be maintained.

I have, &c.
(Signed) W. A. WHITE.

Inclosure 1 in No. 5.

Note Verbale.

DANS un Rapport adressé au Ministère des Affaires Étrangères, le Ministère de la Justice expose ce qui suit.

Le Tribunal Criminel de Première Instance de Stamboul avait rendu par défaut un Jugement condamnant à huit mois de prison le sujet Anglais, Charles Wilson, convaincu d'avoir menacé nuitamment de son arme deux agents de police.

Sur l'opposition du défaillant le Tribunal, après avoir entendu les parties, s'était retiré dans la Chambre des délibérations et délibérait sur la cause, lorsque le Drogman qui y assistait, Mr. Jones, crut pouvoir intervenir dans la discussion, en déclarant que les dépositions faites au Tribunal étant contradictoires il fallait prononcer l'acquittement du prévenu. Le Président lui fit remarquer que les Drogmans quoique présents aux délibérations n'avaient pas qualité d'y prendre part; mais, après avoir laissé continuer pendant quelques moments la discussion, apostrophant le Président, qui recommandait aux Juges de bien considérer s'il y avait ou non causes à annulation, il lui dit, en se levant de son siège, qu'il voyait là une injustice et qu'il ne pouvait plus assister aux délibérations. Le Président le pria de rester en lui déclarant que le Tribunal n'avait encore rien décidé et que si sa décision était même défavorable au prévenu, celui-ci aurait toujours la faculté d'interjeter appel et de se pourvoir en cassation. Il ajouta qu'en se posant en défenseur de Wilson, il faisait preuve de partialité. Mr. Jones avoua que ne connaissant pas bien le Turc, il avait mal interprété les mots "causes d'annulation" prononcés par le Président, et reprit sa place en demandant de nouveau l'acquittement du prévenu. Le Tribunal ayant poursuivi les délibérations confirma son premier Jugement. Aussitôt, Mr. Jones, qui, dans l'intervalle, s'était encore permis d'interpeller le Président, quitta brusquement la Chambre des délibérations en protestant.

En passant par la salle d'audience, il emmena même l'inculpé, ce qui ne permit pas au Tribunal de lui signifier sa sentence.

Une pareille conduite se passe de commentaires. En la signalant à l'Ambassade de Sa Majesté Britannique, le Ministère Impérial est persuadé que dans ses sentiments d'équité elle voudra bien infliger un blâme sévère à Mr. Jones, et donner les ordres nécessaires afin que son administré soit mis en demeure de comparaître assisté d'un autre Drogman devant le dit Tribunal, pour entendre la condamnation qui l'a frappé.

Sublime Porte, Ministère des Affaires Étrangères,
le 3 Décembre, 1888.

Inclosure 2 in No. 5.

Memorandum by Mr. Stavrides.

I HAVE read with much interest the herewith inclosed Memorandum, prepared with much care and intelligence by my colleague, Mr. Block, with reference to Article 42 of he British Capitulations.

Having been desired to state whatever I may have to add to the considerations I have already submitted in my Memoranda addressed at different times both to Her Majesty's Consul-General and to Her Majesty's Ambassador, I beg leave now to preface my present Memorandum by an historical summary of the modifications which have been introduced in the administration of justice in Turkey within the last fifty years. It is a known fact that, at the time when the Capitulations were agreed upon, religious law ruled supreme in the Ottoman Empire. Therefore, foreign subjects had to be submitted to the Sheriat Tribunals, only it was provided that in commercial and civil cases a British delegate should be present to watch the case, while in criminal cases not only was the presence of a delegate required, but it was specially provided that he and the Judge should hear and decide the case together. No provision was made, however, by the authors of the Capitulations as to the course to be adopted in case the Judge and the delegate should happen to disagree on the merits of the case. I am led to believe, therefore, that when such disagreement happened it used to be dealt with by diplomatic means, namely, by recourse to the Sublime Porte.

It must be owned that this was not a convenient mode of procedure, but foreign residents in Turkey not being numerous, and trade not having yet acquired the proportions which it has reached within the last fifty years, it has been possible to work the system adopted *ab antiquo*. But at the time of the accession to the throne of the late Abdul Medjid, father of the present Sultan, in 1839, the influx of foreigners into Turkey began daily to increase, and the commercial relations with Europe to acquire a considerable extension. Consequently, the Ottoman Government found that the religious Tribunals were no longer equal to meet the requirements arising out of the new conditions of the State. It began, therefore, by promulgating the Khatt-i-Sherif of Gyul Khané granting political guaranty of personal rights, equality before the law, religious liberty, responsibility of public functionaries, and prohibition of the Slave Trade. Subsequently it proceeded to refer commercial claims no longer to the Sheriat Tribunals, but to a Council of notable merchants, foreigners, and natives, who used to meet at the Custom-house under the presidency of the Director of the Customs.

In 1850 the Ottoman Government established a Commercial Tribunal, and promulgated a Commercial Code, which was nothing more than a defective translation of the French Commercial Code. Subsequently, in view of diminishing the attributions of the religious Courts it created Police Tribunals, and in 1858 it promulgated a Penal Code taken likewise from the French. But all these new Tribunals were without a regular organization, and their working left much to be desired. The Ottoman Government, in order to limit still further the jurisdiction of the above-mentioned religious Tribunals, qualified that part of the religious law regarding temporal affairs and established separate Civil Tribunals. The institution of the latter, to which foreign subjects were likewise to be submitted, gave rise to opposition on the part of the foreign Missions at Constantinople on the ground that they were not mixed as the Commercial Tribunals were. At last an agreement was made between the Sublime Porte and the foreign Missions to the effect that civil and commercial cases should be referred as before to the Mixed Commercial Courts, with the exception of claims about rent and those involving a sum not exceeding 1,000 piastres. In the year 1870 a Law was promulgated regarding the organization and attributions of the Civil and Criminal Tribunals of the capital, and in 1871 a similar Law was made regarding the provincial Tribunals. According to the above Laws, Civil and Criminal Tribunals of First Instance were to be composed of two members and a President, and it was enacted that they should decide by a majority of votes. At last, in the year 1879, the Porte communicated to the foreign Missions three new Laws, one of criminal procedure, one of civil procedure, and a regulation of sentences, and requested the foreign Missions to be good enough to examine them, and to declare whether they found anything in them contrary to the immunities and privileges granted to foreigners by Treaty. Sir H. Layard, who was the Doyen of the Ambassadors at that time, instructed me thereupon, after communicating on the subject with his colleagues, to convene a Commission of Dragomans to examine carefully the above-mentioned Laws, and to submit the result of our examination of the same to the appreciation of our respective chiefs. Acting in conformity with these instructions, I convened the Commission, and moreover we requested

the Porte to send us two delegates in order that they might supply the information required during the examination of the Laws.

This Commission after three months' assiduous work drafted three separate Reports, which, after being submitted to the chiefs, were communicated to the Porte and transmitted by the latter to the consideration of the Ministry of Justice.

In the above-mentioned Reports the Commission, although declaring that there was nothing contrary to the rights and immunities of foreign subjects in the Laws in question, proposed several modifications in the interest of the better administration of justice.

The Minister of Justice, on reading the Report of the Commission, entirely approved its proposals, and promised to introduce the necessary modifications. Thereupon a *procès-verbal* was agreed upon between the Ministry of Justice and the Dragomans of the Missions regarding the mode of application of the above Law to foreign subjects.

Unfortunately, when the Ministry of Justice reported the above proceedings to Saïd Pasha, who was Grand Vizier at the time, he refused to sanction them, saying that he did not want to modify the laws of the Empire at the bidding of foreigners. On several occasions afterwards the foreign Missions, both in writing and verbally, insisted upon the introduction of the proposed modifications in the above-mentioned Laws, but nothing has been done up to the present moment, and there the matter stands.

Such are, summarily stated, the judicial reforms of Turkey.

It is clear from the above statement that there is no longer one Judge sitting on the Bench, as there was in ancient times, that Criminal Courts are composed of three and five members, that criminal cases are decided by a majority of votes, and that all these modifications were adopted with the knowledge of the foreign Missions, and were considered as progressive judicial reforms. Now, in the presence of all these facts the strict application of Article 42 of our Capitulations becomes almost impracticable, because it seems to me preposterous to maintain that the opinion of the British delegate should prevail over that of the majority or the unanimous opinion of a Court composed of five members, and that, in case we maintain towards the Sublime Porte the strict application of the above clause, we are likely to be put in the following dilemma:—

The Sublime Porte may answer that either we must ignore altogether the modifications introduced in the administration of justice, and submit our subjects to the tender mercies of the Sheriat Tribunals, or if we recognize, as we have seemingly done, the existing judicial reforms, we must accept them as they are, and not stick to the letter of Article 42 of the Capitulations. It becomes, therefore, obvious that some modification of Article 42 is necessary.

I must own at the same time that such is the corruption and gross ignorance which permeates the judicial body in Turkey that we must be very careful in yielding any privilege accruing to British subjects from the ancient Capitulations.

In dealing with Article 42 of our Capitulations I beg to avail myself of the opportunity to mention the recent case which occurred at Mecca. The local authorities at that city imprisoned and tried a British Indian subject, named Abdul Kadir, without the presence of a British delegate, in spite of the pressing representations made by the British Consul at Jeddah to the Governor-General of the Hedjaz, pretending that the Capitulations did not apply to the Holy Cities.

I was then instructed, conjointly with Sir A. Sandison, to make representations to the Grand Vizier. His Highness seemed to concur in the opinion of the local authorities, although he had already dispatched orders for the immediate release of the prisoner. We observed to him that there was no exception provided in the Capitulations regarding Mecca and the Province of the Hedjaz generally, that there were precendents of the years 1883 and 1884, when the Sublime Porte authorized the presence of a British delegate from Jeddah at the trial of British subjects at Mecca. Moreover, Sir A. Sandison read to his Highness a Memorandum containing all the particulars regarding those precedents; we ventured, in addition, to make an *ad referendum* proposal regarding procedure in future cases of this kind, namely, that cases of contravention and offence may be tried in the first instance at Mecca, with a right of appeal to Jeddah in case the Indian subject appears dissatisfied with the decision of that Court, and that, in cases of crime, a preliminary examination be made on the spot, but that the final trial shall take place at Jeddah in presence of the British Consul or of a British delegate. His Highness requested us to make a translation in Turkish of the Memorandum above referred to, in order that he may give the point due consideration, and arrive with us at a satisfactory conclusion.

I presented, the other day, the required translation of the Memorandum to his Highness, who promised to do his best in order to find a *modus vivendi*. It seems to me that, in case our above-mentioned proposal is accepted, it will furnish sufficient protection guaranty to the British Indian subjects at the Holy Cities; at all events, the latter cannot

be abandoned to the arbitrary dealings of the authorities at Mecca without a sufficient control. We are justified in insisting on the intervention of the Consular authorities in virtue of the existing Capitulations, in which there is no exception provided for Mecca or Medina. The Dutch and French Legations have, at the present moment, complaints reported by their respective Consuls at the Hedjaz regarding the unfair dealings of the local authorities towards their Javanese and Algerian subjects, and the exactions practised on them. The above-mentioned Consuls state, moreover, in their respective Reports, that, although the Mecca authorities in former times admitted their respective delegates at Mecca without opposition, they have recently set up the pretension of not allowing the presence of such delegates at Mecca.

In concluding my present Memorandum, I may add that the vagueness in which we are placed as to the application of Article 42 of the Capitulations is very damaging to the public interest, and causes a daily friction with the local authorities. It is, therefore, absolutely necessary that the matter should be submitted to the serious consideration of Her Majesty's Government.

(Signed) C. G. STAVRIDES.

Pera, January 9, 1889.

Inclosure 3 in No. 5.

Memorandum by Mr. Block.

IN 1879 the Sublime Porte proceeded to put in force new procedure in Civil and Criminal Courts.

Mr. Dragoman Stavrides, having had, I presume, private perusal of this procedure, wrote on the 15th May, 1879, a Memorandum pointing out serious mistakes in the new Criminal Code, and on the 9th September, 1879, Mr. Dragoman Alischan wrote a Report on the new Civil Laws; again, on the 12th November, 1879, Mr. Alischan wrote a Report on Saïd Pasha's reforms in the Turkish criminal jurisprudence; and on the 9th December, 1879, Mr. Alischan wrote a Report on a conversation he had had with the Musteshâr (Under-Secretary) of the Ministry of Justice concerning the new Laws.

On the 23rd December Sawas Pasha, then Minister for Foreign Affairs, wrote a note to this Embassy upon the judicial reorganization, inclosing four pamphlets on the criminal procedure, the Civil Tribunals, the Ministry of Justice, and the Notaries. This note was sent to Consul-General Fawcett, who on the 7th January, 1880, replied, making observations and stating that there was a Commission sitting to examine them, and proposing that they should be referred to a Committee of Dragomans. (Copy of this correspondence was sent home on the 8th January, 1880.)

On the 5th January, 1880, the Sublime Porte addressed a further note defending and explaining the new Code of Laws. (Copy sent home with above.)

The matter was then evidently referred to a Commission of Dragomans, for on the 21st February, 1880, Dragomans Alischan and Stavrides sent to Her Majesty's Embassy a Report of a sitting of the Commission of Dragomans on the new civil and criminal procedure, and on the 20th January Her Majesty's Embassy addressed a note stating that a Commission of Dragomans was appointed to examine the new procedure. Sawas Pasha again replied on the 25th February giving a justification of the Porte's action, and Mr. Dragoman Stavrides was instructed to report on this note, which he did on the 28th February, whereupon Her Majesty's Embassy, with the other Embassies, addressed a collective note to Sawas Pasha answering his above note and requesting the appointment Ottoman Delegate. Sawas Pasha replied on the 20th March to the above, stating that Parnes Effendi would sit on the Commission, and Mr. Stavrides wrote a Memorandum on this note on the 22nd March, and on the 23rd March the Heads of Missions addressed a further collective note to Sawas Pasha.

On the 2nd April and the 11th May Messrs. Alischan and Stavrides wrote further Memoranda to Her Majesty's Embassy, giving account of the sittings of the Commission of Dragomans, and finally, on the 12th May, 1880, Her Majesty's Embassy addressed a note to Sawas Pasha inclosing Reports above mentioned, and suggesting certain modifications in the Law before acceptance by Her Majesty's Embassy. This note was never acted upon, and the new procedure, nevertheless, came into force.

Her Majesty's Embassy wrote to the Foreign Office on the 26th May, 1880, sending copies of the above correspondence.

A further Report from Messrs. Alischan and Stavrides giving the result of the

deliberations of the Commission of Dragomans on the Civil Code seems never to have been sent home, nor to the Porte (it is, however, printed).

During this period Messrs. Alischan and Stavrides required instructions as to the action of Dragomans in criminal cases where British subjects were concerned under Article 42 of the Capitulations, and Consul-General Fawcett having given his opinion on this Memorandum, his despatch with the Memorandum was sent home on the 21st March, asking for instructions.

These instructions were sent in an interesting despatch to Sir H. Layard on the 13th May, 1880, inclosing a Confidential Memorandum by Sir E. Hertslet on Article 42 of the Capitulations; it was sent to Sir H. Fawcett, who returned it without remark. However, on the 1st December, 1881, Lord Dufferin addressed a Circular to Consuls giving extracts from the above Confidential Memorandum as to the interpretation and scope of Article 42 of the Capitulations for their information and guidance. (I inclose a copy.)

In the meantime, Mr. Dragoman Stavrides wrote another Memorandum on the new Judicial Regulations, of which I find no trace in the archives, although it is to be found in Blue Book "Turkey No. 8 (1881)."

Again, on the 21st March, 1882, Mr. Stavrides wrote an interesting Memorandum as to the action of the Dragoman in the Criminal and Civil Courts, and Her Majesty's Embassy sent it to the Foreign Office, proposing that a Circular should be sent to Consuls for their guidance (this would have been most advantageous, and the Damato case, among others, would never have caused so much trouble). The Foreign Office on the 11th July replied that a Circular was inexpedient, owing to the delicacy of the question, and the Circular was, unfortunately, never sent.

Again, on the 30th November, 1883, Mr. Stavrides wrote another very interesting Memorandum in reply to the Confidential Memorandum of Sir E. Hertslet, which was sent to Her Majesty's Embassy by Sir H. Fawcett on the 3rd December, 1883. These seem never to have been acted upon.

For the moment the matter dropped; but in 1888, in the case of Dr. Hessenaure at Jerusalem, on the 31st March, Her Majesty's Embassy asked for instructions as to the rôle of the Dragoman, and Lord Salisbury, on the 20th April, inclosed a further copy of Sir E. Hertslet's Confidential Memorandum.

And on the 12th April, 1888, Mr. E. Calvert, in his despatch concerning Mr. Dragoman Acari, sends copies of a correspondence with the Governor of Rhodes, Kemal Bey, in which Mr. Calvert quotes from Lord Dufferin's Circular of 1881. The Governor declines to accept such an interpretation of Article 42 of the Capitulations, and the correspondence is hence somewhat interesting.

Sir H. Fawcett, being asked for a Report on the above, incloses another Report by Mr. Stavrides, and on the 6th June Sir W. White writes to the Foreign Office inclosing copy of Mr. Stavrides' Memorandum of the 30th November, 1883, above-mentioned, and of his Memorandum of the 7th May, 1888, and of Mr. Calvert's despatch and inclosures, and referring to the Confidential Memorandum of Sir E. Hertslet, asks for a further opinion and instructions.

To this no reply has been received.

The case has now come up again by the Porte's note of December 1888, with reference to Mr. Dragoman Jones' action, and I humbly suggest it should be once for all decided, for in spite of the collective note of the foreign Missions of the 12th May, 1880, stating that certain modifications should be introduced into the new procedure, the Porte and Her Majesty's Embassy have diametrically opposed opinions on the subject.

I beg to suggest, therefore, that Mr. Stavrides may be asked if he has anything to add to this Memorandum, and that the Foreign Office may be asked for a final opinion after referring to all the correspondence that has passed as above mentioned, and that therefore some means may be found for arriving at a definite arrangement with the Turkish Government as to the rights and duties of the Dragomans in Civil and Criminal Tribunals. Such a course would save much time and trouble in the future.

(Signed) ADAM BLOCK.

Pera, January 3, 1889.

Inclosure 4 in No. 5.

Circular to Consuls.

Constantinople, December 1, 1881.

Sir,

AS some doubts appear to exist as to the interpretation and scope of Article 42 of the English Capitulations of 1675, I transmit to you herewith, for your information and guidance, an extract from a despatch which was addressed by Earl Granville to Sir Henry Layard in 1880, and which states the views of Her Majesty's Government on the subject.

I am, &c.

(Signed) DUFFERIN.

Inclosure 6 in No. 5.

Extract from Despatch addressed by Earl Granville to Sir H. Layard in 1880, *stating the views of Her Majesty's Government as to the scope of Article* 42 *of the Capitulations.*

IN reply, therefore, to your Excellency's inquiry as to the interpretation and scope which Her Majesty's Government are disposed to give to the Treaty Article in question, I have only to refer you to that Report of the Law Officers in which they state that, in their opinion, the terms of Article 42 do not extend beyond an admission that the British Ambassador or Consul shall be a consenting party to the conviction of the criminal, and that the British Ambassador or Consul is empowered to take part in determining—

1. The sufficiency of the evidence, not by the law of Turkey, but by the ordinary principles of justice;

2. Whether the alleged offence comes within the true intent and meaning of the law of Turkey; and

3. What ought to be the punishment pronounced on the offender, which must be measured not by Turkish rule or standard, but according to reason and equity as understood by the most civilized nations.

Inclosure 7 in No. 5.

Memorandum by Mr. Block respecting Imprisonment of British Indian Subjects at Mecca.

1. ON the 6th March, 1883, Consul Moncrieff reports from Jeddah to Her Majesty's Embassy (and to Foreign Office the 27th February) that a certain Abdul Aziz, a British Indian subject, had been imprisoned at Mecca.

Consul Moncrieff incloses translation of a letter from the Vali, dated the 3rd March, in which the Vali, Osman Pasha, accepts, apparently "after much consideration," as Consul Moncrieff states, his proposal to send Abdul Aziz back again to Mecca for a fresh inquiry in the presence of the Dragoman.

The Vali's letter, according to translation in Embassy archives, states, "send Abdul Aziz with the Dragoman, Youssouf Koudsi Effendi."

On the 22nd April, 1883, Consul Moncrieff again writes to Her Majesty's Embassy that Youssouf Koudsi Effendi and Abdul Aziz had returned from Mecca, where a Special Commission had been established for the affair, and Consul Moncrieff writes "that he has every reason to be satisfied with Koudsi's visit to Mecca, where he was well received," and "that the Vali's Secretary had called on him" (Moncrieff) "at Jeddah, and said that the authorities would never interfere illegally with a British subject again." From the correspondence, which is very lengthy, it is clear that the Dragoman assisted in the fresh inquiry from beginning to end. Consul Moncrieff adds, in his despatch, "the Vali has had to admit Consular action in spite of his dislike and opposition to it."

N.B.—Consul Moncrieff settled the matter without intervention of Her Majesty's Embassy with the Porte.

2. On the 29th October, 1884, Consul Jago telegraphs from Jeddah to Her Majesty's Embassy that two Indian ladies were arrested at Mecca, and asked that the Porte should be urged to send them to Jeddah.

In his despatch of the 4th November Consul Jago reports that, on the 2nd November, he received a telegram from the Vali (translation inclosed in despatch) asking that Youssouf Koudsi should be sent to Mecca. Koudsi left for Mecca; but although he (Mr. Jago) had received Embassy's telegram on the 2nd November to the effect that the Porte had instructed the Vali in the sense of his telegram of the 29th October (above mentioned), yet he telegraphs again that the Vali declined to recognize the order or obey, and on the 4th November the Embassy again telegraphed to Consul Jago that the Porte had a second time instructed the Vali as required. On the 10th November Consul Jago

writes that Dragoman Koudsi returned from Mecca with the ladies, and that the Vali surrendered all the positions he had taken up with regard to the matter. (Foreign Office informed 11th December, 1884.)

In this case Her Majesty's Embassy wrote a note to Assim Pasha, dated the 4th December, 1884 (copy to Foreign Office), in which Her Majesty's Embassy cites the case of Abdul Aziz in 1883 (see above), and states: "M. Jago s'empressa de faire part au Vali que toute sentence rendue en l'absence d'un Délégué du Consulat d'Angleterre serait considéré comme nulle et non avenue en vertu des Traités existants;" and, "le précédent d'Abdul Aziz établit le droit du Consulat Britannique à Djeddah d'étendre sa protection sur tous les sujets Anglais résidant à La Mecque."

On the 23rd February the Porte replied, but merely giving a different version of the facts, not at all refuting the arguments and conclusions of Her Majesty's Embassy, nor declining to accept the principle laid down as above.

On the 16th April, 1885, Her Majesty's Embassy again replied to Porte, and there the matter dropped.

(Signed) ADAM BLOCK.

Constantinople, January 10, 1889.

A translation of this Memorandum has been given to the Grand Vizir.

A. B.

Inclosure 8 in No. 5.

M. van Goudrian to Sir W. White.

Constantinople, le 5 Janvier, 1889.

Cher Sir William,

M. JOUBERT, qui avait manifesté pendant mon absence au Chargé d'Affaires, *ad interim*, le désir d'être renseigné sur la manière dont le Consulat des Pays-Bas avait exercé jusqu'ici la protection des pèlerins Javanais aux villes saintes, m'a demandé hier de lui donner un résumé des communications à ce sujet de mon Consul à Djeddah. Je les lui envoie aujourd'hui, mais comme vous avez bien voulu me communiquer l'autre jour que l'Ambassade Anglaise étudie en ce moment cette même question, la pensée m'est venue de me permettre de vous offrir copie de ces résumés dans l'espoir qu'ils pourront être de quelque utilité.

Veuillez, &c.

(Signé) VAN TETS VAN GOUDRIAN.

Inclosure 9 in No. 5.

De la Protection des Pèlerins Étrangers par leur Consulat dans les Villes Saintes.

LE Consulat des Pays-Bas à Djeddah ne s'est, jusqu'ici, heurté à aucune difficulté quand il s'agissait de défendre les intérêts des pèlerins Indiens pendant leur séjour dans les villes saintes. Chaque fois que le Consul s'était saisi de plaintes il écrivait aux autorités ou envoyait son Drogman à La Mecque. S'il s'agissait des plaintes contre les Sheikhs de pèlerins, et c'était le cas le plus fréquent, le Consul s'adressait au Sheikh-en-chef, ou Grand Sheikh, et arrangeait avec lui l'affaire, le plus souvent sans aucune immixtion des autorités. Sans que le Consul avait un Agent officieux à La Mecque, il a donc pu veiller d'une façon suffisante aux intérêts des sujets Néerlandais Indiens dans les villes saintes, et jamais le droit du Consulat de s'occuper des affaires se produisant à La Mecque n'avait été contesté.

Il paraît cependant que le Gouvernement Ottoman a l'intention de limiter la sphère d'action des Consulats strictement à Djeddah, et de leur interdire de veiller aux intérêts de leurs administrés à La Mecque.

Les autorités à La Mecque ont voulu notamment empêcher cette année les pèlerins Algérieus de faire le trajet à Médine par Djeddah et Jambo, parce qu'elles craignaient de perdre ainsi les revenus notables qu'elles prélèvent des caravanes qui se rendent directement à dos de chameau de La Mecque à Médine. Le Consul de France fit protester contre cet abus de pouvoir à La Mecque, et il en résulta que le séjour à La Mecque fut interdit à la personne qui s'y était porté son mandataire, et qu'il fut informé que l'on n'entendait pas reconnaître des Agents des Consulats étrangers dans les villes saintes.

L'intention attribué ci-dessus au Gouvernement Ottoman, vient de se manifester encore

plus clairement à l'occasion d'un incident qui s'est produit à l'égard du Consulat Britannique à Djeddah. Un sujet Anglo-Indien avait été arrêté à La Mecque et lorsque le Consul de Sa Majesté Britannique adressa des observations au Vali et insista que cet individu fut interrogé en présence d'un représentant du Consulat, il lui fut répondu non seulement que l'on n'entendait pas reconnaître des représentants des Consulats étrangers à La Mecque, mais, en outre, qu'il était interdit aux Consuls étrangers d'intervenir à La Mecque ou de s'occuper de ce qui s'y passait. Pourtant, par une note du 4 Décembre, 1884, à la Sublime Porte, l'Ambassade Anglaise avait déjà établi le droit du Consulat Britannique à Djeddah, d'étendre sa protection sur tous les sujets Anglais résidant à La Mecque, et depuis cette époque jusqu'à ce que l'incident susvisé s'était produit, les affaires et procès des sujets Britanniques ont toujours été conduits, traités, et jugés en présence d'un représentant du Consulat.

Si ce droit d'étendre leur protection à leurs sujets résidant à La Mecque était enlevé aux Consulats étrangers à Djeddah, ceux-ci perdraient en grande partie leur raison d'être. Car les pèlerins résident la plupart du temps de leur séjour non pas à Djeddah mais dans les villes saintes, où ils seraient alors livrés sans défense aucune aux concussions les plus déplorables.

Il est donc indispensable que le droit d'étendre leur protection à leurs administrés résidant à La Mecque soit maintenu, comme par la passé, aux Consulats étrangers à Djeddah.

Inclosure 10 in No. 5.

Renseignements sur les Affaires du Hedjaz, obtenus par l'entremise du Consulat des Pays-Bas à Djeddah, le 8 Octobre, 1888.

SAÏD AHMED ASAAD, Conseiller du Sultan pour les Affaires Arabes, est arrivé ces jours-ci à Djeddah. Le motif de son arrivée n'est pas connu avec certitude. L'on prétend cependant généralement qu'il est tombé en disgrace et a été relégué à Taif, petit endroit situé non loin de La Mecque. Cette nouvelle, pourvu qu'elle soit exacte, ferait prévoir des changements dans l'administration du Hedjaz, parce que Saïd Ahmed Asaâd était l'homme par l'influence duquel à Constantinople le Grand Shérif de La Mecque se maintenait. Le Vali actuel, Safwad Pacha, est tombé à peu près en enfance et le pouvoir se trouve virtuellement concentré entre les mains du Grand Shérif et de son *alter ego*, Oman Nassif.

Ces deux personnages excerçaient, de concert avec Osman Bey, Chambellan du Sultan et propriétaire d'une imprimerie à Constantinople, le commerce des Korans. Sur les représentations orales du Chargé d'Affaires *ad interim* de cet été à son Altesse le Grand Vizir, l'on s'est abstenu cette année de forcer les pèlerins Javanais d'acheter de ces Korans, mais l'on s'est appliqué à rentrer d'une autre manière dans son argent, en augmentant notamment le loyer des chameaux sur le parcours de La Mecque à Médine. Les plaintes des pèlerins Javanais étaient générales des prix exorbitants exigés de ce chef d'eux, ainsi que des escroqueries, exactions, et concussions dont ils avaient eté les victimes à La Mecque. La faute de tout ceci retombe sur le Grand Shérif, qui exige constamment de l'argent des Sheikhs, qui à leur tour sont forcés à se rattraper sur les pèlerins.

Le mécontentement que cause l'état de choses actuel est général aussi parmi les fonctionnaires Ottomans. L'autorité de Sa Majesté le Sultan dans ces parages est réduite à rien et des intrigues du Grand Shérif et d'Omar Nassif, qui ne visent que le gain personnel, sont à l'ordre du jour. Si le Grand Shérif tombait, son frère Abdullah, qui réside à Constantinople, sera probablement appelé à le remplacer. L'intérêt du pays exigerait alors l'envoi simultané d'un Vali probe et énergique.

Le 12 Décembre, 1888.

L'on prétend généralement ici que le Vali Safwad Pacha sera remplacé par Nafiz Pacha, Vali d'Erzeroum, qui a été auparavant longtemps Mutessarif de Bassorah. Safwad Pacha ne sera regretté par personne. Il n'a rien fait pendant toute la durée de son gouvernement, abandonnant le pouvoir complètement au Grand Shérif et aux créatures de ce dernier, qui ont abusé de la manière la plus honteuse dans leur intérêt financier particulier.

Il n'y a pas lieu de prévoir que la nomination du nouveau Vali portera modification à la politique du Hedjaz. Le parti du Grand Shérif paraît encore toujours disposer d'une grande influence à Constantinople, en preuve de quoi l'on pourrait citer la nomination d'un certain Féhim Bey comme Caïmacam de Djeddah, que Osman Pacha avait révoqué dans le temps comme tel sur sa propre responsabilité.

Saïd Ahmed Asaâd se trouve encore toujours au Hedjaz, notamment à Médine, sans que l'on sache s'il y est relégué ou non.

Inclosure 11 in No. 5.

Note Verbale.

DANS un Rapport adressé au Ministère des Affaires Etrangères, le Département de la Justice expose ce qui suit.

Le Tribunal Criminel de Première Instance de Stamboul avait rendu par défaut un Jugement condamnant à huit mois de prison le sujet Anglais, Charles Wilson, convaincu d'avoir menacé nuitamment de son arme deux agents de police.

Sur l'opposition du défaillant le Tribunal, après avoir entendu les parties, s'était retiré dans la Chambre des Délibérations et délibérait sur la cause, lorsque le Drogman qui y assistait, Mr. Jones, crut pouvoir intervenir dans la discussion, en déclarant que les dépositions faites au Tribunal étant contradictoires, il fallait prononcer l'acquittement du prévenu. Le Président lui fit remarquer que les Drogmans, quoique présents aux délibérations, n'avaient pas qualité d'y prendre part; mais après avoir laissé continuer pendant quelques moments la discussion, apostrophant le Président, qui recommandait aux Juges de bien considérer s'il y avait ou non causes à annulation, il lui dit, en se levant de son siège, qu'il voyait là une injustice et qu'il ne pouvait plus assister aux délibérations. Le Président le pria de rester, en lui déclarant que le Tribunal n'avait encore rien décidé et si sa décision était même défavorable au prévenu, celui-ci avait toujours la faculté d'interjeter appel et de se pourvoir en cassation.

Il ajouta qu'en se posant en défenseur de Wilson, il faisait preuve de partialité. Mr. Jones avoua que ne connaissant pas bien le Turc, il avait mal interprété les mots "causes d'annulation" prononcées par le Président et reprit sa place en demandant de nouveau l'acquittement du prévenu. Le Tribunal ayant poursuivi les délibérations, confirma son premier Jugement. Aussitôt, Mr. Jones, qui dans l'intervalle s'était encore permis d'interpeller le Président, quitta brusquement la Chambre des Délibérations en protestant. En passant par la salle d'audience, il emmena même l'inculpé, ce qui ne permit pas au Tribunal de lui signifier sa sentence.

Une pareille conduite se passe de commentaires. En la signalant à l'Ambassade de Sa Majesté Britannique, le Ministère Impérial est persuadé que, dans ses sentiments d'équité, elle voudra bien infliger un blâme sévère à Mr. Jones et donner les ordres nécessaires afin que son administré soit mis en demeure de comparaître, assisté d'un autre Drogman, devant le dit Tribunal, pour entendre la condamnation qui l'a frappé.

Sublime Porte, le 3 Décembre, 1888.

No. 6.

The Marquis of Salisbury to Sir W. White.

(No. 9. Consular.)

Foreign Office, March 4, 1889.

Sir,

IN your Excellency's despatch No. 8, Consular, of the 12th January, you refer to a tendency on the part of the Turkish authorities to dispute the applicability of Article 42 of the Capitulations to cases of British Indian subjects visiting Mecca.

Mr. Stavrides in his Memorandum inclosed in that despatch gives a very clear account of the present state of the question. Your Excellency has also forwarded an excellent précis by Mr. Block of precedents in 1883-84, in which the right of the British Consular authorities to intervene in such cases was successfully asserted; together with a Memorandum on the question which has been communicated to you by the Dutch Minister.

I entirely concur in the view which was urged on the Grand Vizier by Sir A. Sandison and Mr. Stavrides that, as the Capitulations contain no provision to except the Hedjaz or the holy cities from their stipulations, Her Majesty's Government can admit no such exception. The only grounds on which Her Majesty's Government could be justified in renouncing at Mecca the rights of protection conceded by the Capitulations for the Ottoman Empire generally would be a distinct declaration from the Porte that that city had ceased to be (in the language of Article 42) "a portion of the Sultan's sacred dominions," in which case it would be necessary to make such arrangements as might be possible with the Grand Shereef as an independent authority. But it is not, perhaps, necessary to contemplate such a contingency.

Her Majesty's Government must, therefore, claim that, in all cases of arrest of British subjects at Mecca, either a Dragoman shall be admitted to be present at the trial on the spot, or that the prisoner shall be sent to Jeddah for trial in the presence of a British Consular officer or delegate.

There are obvious reasons why the occasional visit to Mecca of a Dragoman from the British Consulate at Jeddah should be encouraged. He would be able to report generally on the treatment of British Indian pilgrims, and it would undoubtedly be a greater safeguard against oppression and injustice that he should attend any proceedings instituted against British subjects in Mecca rather than that he should only be present at trials in Jeddah in case of appeal against the sentence of First Instance at Mecca, or when the charge is of so serious a character as to suggest the immediate removal of the case to the latter place after a preliminary investigation at Mecca.

But if the arrangement in this sense suggested by Sir A. Sandison to the Grand Vizier seems acceptable to his Highness, I should be prepared to assent to it, on condition always that before any trial of a British subject takes place at Jeddah for offences committed at Mecca the Dragoman should have full facilities for examining and collecting on the spot any evidence that may be considered necessary to establish the truth.

I am, &c.

(Signed) SALISBURY.

No. 7.

The Marquis of Salisbury to Sir W. White.

(No. 10. Consular.)

Foreign Office, March 4, 1889.

Sir,

IN my immediately preceding Consular despatch I have discussed the general question raised in your Excellency's despatch No. 8, Consular, of the 12th ultimo respecting the interpretation and application of Article 42 of the Capitulations.

Your Excellency has also forwarded as an inclosure in that despatch a *note verbale* from the Porte complaining of the demeanour of Mr. Vice-Consul Jones when attending the trial of a British subject before the Court of First Instance at Stamboul. You state that Mr. Jones' conduct has the approval of Sir H. Fawcett, but that, before replying to the Porte, you are desirous of referring the matter home.

It will be evident from the contents of my preceding despatch already referred to that Her Majesty's Government do not in any way admit the contention that the Consular officer or Dragoman who is present at the trial of a British subject before a Turkish Court is debarred from taking part in the deliberations of the Judges. The Circulars issued by the Porte itself, and published in Aristarchi's "Législation Ottomane" (vol. iv, p. 19, vol. v, p. 98), to which your Excellency has drawn attention, seem to me to prove that such a contention cannot even be advanced by the Porte with any consistency.

On the other hand, if Mr. Jones' attitude was really such as is described in the *note verbale*, it can scarcely be said to satisfy the prescription of conciliatory language and demeanour on which so much stress is laid in Lord Palmerston's instruction to Consul-General Cumberbatch of the 19th February, 1847.

Mr. Jones had no doubt the right to deliver a written protest if he felt that the Judgment of the Court was contrary to justice. But I am of opinion that, unless the irregularity of procedure or injustice of the sentence was of so flagrant a character as to call for an immediate remonstrance by Her Majesty's Embassy to the Porte, the proper course, after delivery of the protest, was to proceed by appeal to a higher Court, taking proper precautions to insure that the sentence should not be executed pending such appeal; and I think it would be desirable that this course should now be followed, unless there should be reasons to the contrary of which I have not been informed.

In any explanations which may be given to the Porte in reply to its *note verbale* it should be distinctly stated that Her Majesty's Government maintain that the Dragoman or Consular representative present at the trial has a right, not merely to be present at all the deliberations of the Judges, but to take part in them on an equal footing; and that his concurrence is necessary to give effect to the conviction of the accused; although where an appeal is given, Her Majesty's Government are ready to resort to that remedy before making a contested sentence the subject of direct diplomatic discussion with the Porte.

I am, &c.

(Signed) SALISBURY.